

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

EMBRY JAY LOFTIS,

Plaintiff,

v.

STERLING TUCKER, Sgt. Deputy Sheriff;
and BRYLUN ANDERSON, Deputy Sheriff,

Defendants.

Case No. CIV-22-296-RAW-JAR

ORDER

Before the court are Defendant Brylun Anderson's Motion to Dismiss [Docket No. 16] seeking dismissal of the case pursuant to Fed. R. Civ. P. 12(b)(1) and (6) for lack of subject matter jurisdiction and for failure to state a claim, Plaintiff's Second Motion Requesting for [sic] Extension of Time [Docket No. 27] and the United States Magistrate Judge Robertson's Report and Recommendation (R&R) [Docket No. 40], which also reviews the matter for compliance with Fed. R. Civ. P. 4(m) with regard to Sterling Tucker. This case was referred to Magistrate Judge Jason A. Robertson for all pretrial and discovery matters, including dispositive motions, pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72 .

The case was filed by the Plaintiff *pro se* on October 17, 2022 and alleged that the Defendants violated Plaintiff's civil rights under 42 U.S.C. § 1983 and certain state law claims by bursting through his front door in Ardmore, Oklahoma and tackling him. Plaintiff alleges that the Defendants' actions violated his constitutional rights under the Fourth, Eighth, Thirteenth, and Fourteenth Amendments. Plaintiff also asserts claims pursuant to Article 2, Section 30 of the Oklahoma Constitution and Okla. Stat. tit. 22 §§ 1239-1240 and Okla. Stat. tit. 21 §§ 99 and 99a.

Defendant Anderson seeks dismissal of the claims against him pursuant to Fed. R. Civ. P. 12(b)(6), alleging the claims fail to meet the plausibility standard set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Magistrate Robertson found that Plaintiff has not met the standard for his § 1983 federal claims and recommends that the District Judge decline to exercise supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367(c)(3).

Magistrate Judge Robertson noted that Plaintiff's Motion for Extension of Time does not request to amend the Complaint, but seeks access to documents and other materials in the Carter County Jail and to stay the case until the issue is resolved. The magistrate judge found that the request is outside the scope of this lawsuit and any amendment of the Complaint to attempt to achieve plausibility would be futile, given the allegations set forth. As a result, the motion should be denied.

The magistrate's review of the case for compliance with Fed. R. Civ. P. 4(m) found that Defendant Sterling Tucker has never been served in this case which was filed October 17, 2022. Therefore, Magistrate Robertson recommends that Sterling Tucker be dismissed from this action for failure to obtain service within 90 days from filing.

Upon consideration of the motions, the briefing, and the record, the Magistrate Judge issued the R&R [Docket No. 40] on September 16, 2023, recommending that Defendant Brylun Anderson's Motion to Dismiss [Docket No. 16] be granted and the case dismissed as to Mr. Anderson. Further, Magistrate Judge Robertson recommends that Plaintiff's Motion for Extension of Time [Docket No. 27] be denied. Finally, Magistrate Judge Robertson recommends that Defendant Sterling Tucker, Sgt. Deputy Sheriff, be dismissed from the action. Any objections to the R&R were to be filed within fourteen days. No objections have been filed.

The court finds that the R&R is well-supported by the evidence and the prevailing legal authority. Accordingly, the R&R [Docket No. 40] is hereby AFFIRMED and ADOPTED as this court's Findings and Order. Defendant Brylun Anderson's Motion to Dismiss [Docket No. 16] is hereby GRANTED and the case dismissed as to him. Plaintiff's Motion for Extension of Time [Docket No. 27] is DENIED. Defendant Sterling Tucker, Sgt. Deputy Sheriff, is dismissed from the action for Plaintiff's failure to serve him within 90 days of filing the case.

IT IS SO ORDERED this 14th day of December, 2023.

A handwritten signature in cursive script, reading "Ronald A. White".

**HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**